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| 09/736,408      | 12/15/2000  | Miriam Fields-Babineau | 4523-001            | 7703             |

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EXAMINER

SMITH, KIMBERLY S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3644

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/736,408

Applicant(s)

FIELDS-BABINEAU, MIRIAM

Examiner

Kimberly S Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 20 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The finality of the rejection of the last Office action, paper number 14 of October 9, 2002 has been withdrawn. As such, the following action applies.

#### ***Information Disclosure Statement***

2. The veracity of the Information Disclosure Statement filed 08/20/02 has been called into question. The Borchelt Reference tiled "Snoot Loop Halter for Dogs" (item AR in paper number 11) has been listed including a date of August 2001 which post-dates the filing date of the instant application. However, the identical reference has been presented to the Office in Paper Number 2, having been stamped Received by the office on March 22, 2001, which pre-dates the Applicant's proposed date of the article submitted in the IDS of Paper number 11. Further, the article submitted with Paper number 3 includes a date of facsimile transmittal of September 1, 2000. With the evidence to the contrary, the validity of the August 2001 date submitted by the Applicant in paper number 11 is called into question.

#### ***Response to Amendment***

3. The declaration under 37 CFR 1.132 filed 08/20/02 is insufficient to overcome the rejection of claims 6-25 based upon rejections as set forth in the instant Office action as set forth in the last Office action because: the declaration pertains to the lack of utility of a prior art invention. These facts are not germane to the rejections at issue in the instant action as the reference is still applicable as prior art. The applicant has not provided overwhelming evidence to the contrary and it is noted that the Applicant has included in her *Dog Training With a Head*

*Halter*, the reference called into question for utility. With regards to the Applicant's discussion of commercial success as addressed in the Appeal Brief, no such evidence has been presented.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al., US Patent 5,992,352 (Borchelt) in view of "Snoot Loop Halter for Dogs by Peter Borchelt: submitted in Applicant's admitted prior art (Borchelt').

Borchelt discloses a collar member (20), a snoot loop (50), a first and second cheek strap (40 and 30) and an under chin strap (60) connected at a first end to the collar member and at a second end to a ring wherein the lower portion of the snout loop is drawn through the ring to close the canine jaw; wherein a dog leash (70) is connected to the lower portion of the snout loop; wherein a retaining ring (64) is attached above the lower portion of the snout loop. However, Borchelt does not positively state the use of a non-flat portion or the snout loop having rounded edges. Borchelt' teaches within the same art on the identical device that "a piece of felt or flannel can be wrapped in a layer around the nose loop and sewn to form a close fitting tube" in order to reduce chaffing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upper nose loop to be non-flat and have rounded edges (i.e. cylindrical tube) as disclosed by the "close fitting tube" of Borchelt' in order to

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prevent injury to the nose of the animal. It would have further been obvious to combine the cylindrical tube of Borchelt' with the snout loop of Borchelt as it has been held that forming in once piece an article which has formerly been formed in two pieces (i.e. the snout loop and the rounded tube) and put together involves only routine skill in the art.

Regarding claim 15, Borchelt as modified as per the same obviousness as applied for claim 10 discloses the inventions substantially as claimed. However, Borchelt as modified does not positively state that the snout loop is a cotton/nylon braid. It is disclosed in the Abstract of Borchelt that the various components are preferably formed of a flexible material such as a braided fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the snout loop out of a cotton/nylon braid since it has been held to be within the general skill of a worker in the art to select a known material on the basis of it's suitability for the intended use as a matter of obvious design choice.

6. Claims 6, 11-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al., US Patent 5,992,352 (Borchelt) in view of "Snoot Loop Halter for Dogs by Peter Borchelt: submitted in Applicant's admitted prior art (Borchelt') and further in view of DeGroot, US Patent 4,483,275.

Regarding claims 6, 11-14, 16 and 17, Borchelt as modified per the same obvious rationale as applied above, discloses a collar member (20) forming a continuous loop, a snout loop (50) including a single lofted upper nose member (i.e. the felted cylindrical member) and an under chin member forming a continuous loop, a first cheek strap (40), a second cheek strap (30) and an under chin strap (60) connected at a first end to the bottom strap of the collar and connected at the second end to a cinch ring (fifth ring) wherein a portion of the under chin

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member is drawn through the cinch ring for attachment to a dog leash (70). However, Borchelt as modified does not disclose the collar member comprising a top strap and a bottom strap connected via a first and second metal collar ring or to the snout loop by respective third and fourth metal rings or a snout loop wherein the upper nose member and under chin member being connected via metal loop rings. DeGroot teaches within the same field of endeavor the use of a top strap connected to a bottom strap via a first and second collar ring and the upper nose member and the under chin member connected via a first and second loop ring as being a functional equivalent of a fixed joint configuration (as shown in Figure 5 of DeGroot) in order to adjust to the configuration of the animal's physiology (reference column 2, line 29 in which it is stated the loop and ring system can be used for both connections 20 and 26). Therefore, because the use of a loop and ring system was a known equivalent for the attachment of jointed strap structures, one of ordinary skill in the art would have found it obvious to substitute the fixed structure as disclosed by Borchelt as modified for the loop and ring system. While DeGroot does not positively state the material used for the ring, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a metal ring, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 18, Borchelt as modified discloses the first cheek strap rotates about a portion of the first ring and rotates about a portion of the third ring.

Regarding claim 19, Borchelt as modified discloses the second cheek strap rotating about a portion of the second and fourth rings.

Regarding claim 20, Borchelt as modified discloses the first cheek strap rotating about the first ring and the third ring and the second cheek strap rotating about the second ring and the fourth ring.

Regarding claim 21, Borchelt as modified discloses the upper nose member of the snout loop being a unitary non-flat member.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al, US Patent 5,992,352 (Borchelt) in view of Tachi et al., US Patent 4,798,174 (Tachi).

Borchelt discloses the invention substantially as claimed. However, Borchelt does not disclose the use of the collar member being formed from a piercible woven fabric in which the a buckle at the first end of the collar member connects the first end of the collar member to a plurality of positions along a second end of the collar by piercing through the spaces defined by weaves of the woven fabric. Tachi teaches within the analogous art of collars for pets a collar having a buckle at a first end that is adjustable to a variety of positions by piercing the woven fabric for the purpose of quickly adjusting the dimensions of the collar. It would have been obvious to one having ordinary skill in the art at the time the invention was made apply the teaching of Tachi's quick adjustable collar to the invention of Borchelt in order to allow for quick adjustment of the collar member of Borchelt's harness as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability (in this case, quick adjustment) for the intended use as a matter of obvious design choice.

8. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt as modified as applied to claim 22 above, and further in view of "Snoot Loop Halter for Dogs by Peter Borchelt: submitted in Applicant's admitted prior art (Borchelt').

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Borchelt as modified in view of Tachi discloses the invention substantially as claimed. However, Borchelt as modified does not positively disclose the upper nose member being a unitary non-flat member. Borchelt' teaches within the same art on the identical device that "a piece of felt or flannel can be wrapped in a layer around the nose loop and sewn to form a close fitting tube" in order to reduce chaffing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upper nose loop to be non-flat and have rounded edges (i.e. cylindrical tube) as disclosed by the "close fitting tube" of Borchelt' in order to prevent injury to the nose of the animal. It would have further been obvious to combine the cylindrical tube of Borchelt' with the snout loop of Borchelt as it has been held that forming in once piece an article which has formerly been formed in two pieces (i.e. the snout loop and the rounded tube) and put together involves only routine skill in the art. Regarding the metal ring, Borchelt discloses the cinch ring is preferably formed of metal (column 3, line 37)

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt in view of Tachi as applied to claim 22 above in view of DeGroot, US Patent 4,483,275.

Borchelt as modified in view of Tachi discloses the invention substantially as claimed. However Borchelt as modified does not disclose the straps being connected by metal rings. DeGroot shows that metal rings and stitched members are equivalent attachment structures known in the art. Therefore, because these two attachment structures were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a ring for stitching. It would have further been obvious to one having ordinary skill in the art at the time the invention was made to use a ring comprised of metal,



since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

kss

  
CHARLES T. JORDAN  
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